

REMARKS

Applicant submits this Reply in response to the final Office Action mailed March 29, 2010.

Prior to this response, claims 38-76 were pending, of which claims 38 and 55 were independent. In the final Office Action, the Examiner applied 35 U.S.C. § 103(a) to reject claims 38-50, 52-67, and 69-76 as being unpatentable over U.S. Patent Publication No. 2001/0001268 ("Menon") in view of European Patent No. 1304831 ("Korhonen") and to reject claims 51 and 68 over Menon in view of Korhonen and further in view of the document labeled JADE: Java Agent Development Framework ("Bellifemine").¹

In this response, Applicant proposes to amend claims 38, 40, 42-45, 48, 50-55, 57, 59-62, 65, 67-71, and 74 and to cancel claims 41, 58, 75, and 76 without prejudice or disclaimer. After entry of this Reply, claims 38-40, 42-57, and 59-74 would be pending. No new matter would be added. No further searching would be necessary either, since the amendments to independent claims 38 and 55 incorporate subject matter previously encompassed by dependent claims 41, 58, 75, and 76. Consequently, this Reply is in condition for immediate consideration and entry by the Examiner.

Applicant respectfully traverses the pending rejections in light of the proposed amendments for at least the following reasons.

¹ The Office Action contains a number of statements characterizing Applicant's disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Rejection of Claims 38-50, 52-67, and 69-76 Under 35 U.S.C. § 103(a)

In the Office Action, claims 38-50, 52-67, and 69-76 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonan. Amended claims 38 and 55 are the only independent claims included in this claim rejection under Section 103(a). Claims 41, 58, 75, and 76 have been canceled, rendering their rejection moot. Applicant respectfully traverses the rejection of amended independent claims 38 and 55 at least because Menon and Korhonan fail to disclose or render obvious their subject matter.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See M.P.E.P. § 2142. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *Id.* In this application, a *prima facie* case of obviousness has not been established because the scope and content of the prior art have not been properly ascertained, see M.P.E.P. § 2141, and thus, a reason why the prior art would render obvious the claims has not been articulated.

Amended independent claims 38 and 55 are patentably distinguishable over the cited art in that they recite either an architecture or method for monitoring quality of service in a telecommunication network including a set of mobile terminals having “at least one measuring agent configured to interface with processes selected from a group of processes for managing application sessions of said telecommunication network and processes for measuring operating conditions of said telecommunication network.” The method also involves scheduling quality of service measuring campaigns and “configuring, for executing said defined measuring campaign, at least one measuring

agent associated with each mobile terminal of said subset according to said set of identifying characteristics...”

Applicant has proposed amending independent claims 38 and 55 and related dependent claims to clarify that the recited “terminals” are “mobile terminals.” The basis of these amendments is evident both from the specification and from dependent claims 41 and 58, which have now been canceled. These amendments help to further distinguish the present invention from Menon and Korhonan.

For example, in the Final Office Action, the Examiner appears to map the “terminals” recited in claims 38 and 55 alternately to “network nodes 856” or “base stations 30 or 101” in Menon. Final Office Action at 3-5. Menon generally discloses “a telecommunications system supporting wireless access that can handle both packet data and voice transmissions.” Menon ¶ [0009]. Menon discloses that its telecommunication system comprises four sub-networks: a core packet data network, an Internet Protocol packet voice network, an Internet Protocol facsimile network, and an Operation Support System (OSS). See *id.* at ¶¶ [0051]-[0058]; see also *id.* at Fig. 1; Fig. 5. Clearly, Menon does not disclose or suggest the claimed subject matter relating to a “mobile terminal,” as the independent claims now recite.

Indeed, with respect to former claims 41 and 58, which recited that the “set of terminals comprises at least one mobile terminal,” the Examiner contends that Menon meets this recitation by disclosing a wireless network. Final Office Action at 6, 21 (“see Menon; paragraph 0027; ‘FIG. 13 depicts a generic management protocol architecture protocol for management of a network node in a wireless access network’”). But disclosure of a “wireless access network” in Menon is wholly insufficient to substantiate

the obviousness of the claimed subject matter directed to a “mobile terminal” with the specific recitations of the methods performed by such a mobile terminal.

Accordingly, Applicant respectfully submits that Menon fails to teach or suggest the claimed “set of mobile terminals, each mobile terminal of said set of mobile terminals housing at least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of mobile terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each mobile terminal of said subset,” as required at least by Applicant’s amended independent claim 38.

In addition, the proposed amendments further distinguish the independent claims from Menon and Korhonen in that they incorporate the subject matter of former claims 75 and 76. Specifically, independent claims 38 and 55 now require that a measuring agent manages an application session to derive therefrom a set of measurement data with each mobile terminal further comprising:

an elaboration agent configured to pre-process
said set of measurement data derived from said application
session; and

a communication agent configured to send said
set of pre-processed measurement data to said
management and configuration subsystem.

Again, in rejecting claims 75 and 76, the Examiner maps the claimed subject matter to “network nodes 856” in Menon, which are not “mobile terminals.” Accordingly, the proposed amendments to claims 38 and 55 to incorporate the subject matter of claims 75 and 76 even further distinguishes them from the cited art.

Korhonen does not cure the above-noted deficiencies of Menon. Korhonen discloses “a method and system for distributing, transferring and monitoring QoS [Quality of Service] data in a packet-switched mobile communication network.” Korhonen ¶ [0001]. In this system, “QoS data obtained from the UMTS QoS components is transmitted to a monitoring agent MA,” where MAs exist in “the user equipment UE, in the RNC [of the radio access network], and in the SSGN . . . and GGSN [each of the core network].” *Id.* ¶ [0021]. Importantly, “[t]he monitoring agent MA in a mobile station UE adds a QoS header field [to an IP packet transmitted from the UE to the other network components] according to the QoS wanted by the user” *Id.* ¶ [0026]. The monitoring agents of the radio access network and the core network then add QoS values, if necessary, to the IP packet, and eventually “[t]he packet provided with updated QoS data [is received by] the mobile station UE...” *Id.* ¶ [0028].

In other words, Korhonen only discloses that a user equipment’s monitoring agent may request quality of service parameters to be provided to the radio access network or core network, instead of disclosing “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of mobile terminals . . . and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each mobile terminal of said subset,” as required by Applicant’s amended independent claim 38.

Thus, neither Menon nor Korhonen teaches or suggests the subject matter recited by independent claim 38, as proposed to be amended, and as would be required by each of dependent claims 39, 40, 42-50, 52-54, and 72-74. Independent claim 55, as proposed to be amended, would be different in scope from amended independent

claim 38, but recites similar subject matter and is therefore allowable for at least the same reasons. Claims 56, 57, and 59-71 each depend from amended independent claim 55 and should also be allowable at least due to their dependence on an allowable base claim. Applicants therefore respectfully request the withdrawal of the Section 103 rejection of claims 38-40, 42-57, and 59-74 and their timely allowance.

Rejection of Claims 51 and 68 Under 35 U.S.C. § 103(a)

In the final Office Action, claims 51 and 68 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Menon in view of Korhonan and further in view of Bellifemine. Claims 51 and 68 depend from amended independent claims 38 and 55, which are allowable over Menon in view of Korhonan for at least the reasons outlined above. Bellifemine does not remedy the deficiencies of Menon and Korhonan outlined above, because it fails to disclose or render obvious, at least, a “set of mobile terminals, each mobile terminal of said set of mobile terminals housing at least one measuring agent” and “a scheduling module for scheduling quality of service measuring campaigns, said scheduling module identifying a subset of said set of mobile terminals ... and configuring, for executing said defined measuring campaign, at least one measuring agent housed by each mobile terminal of said subset,” as recited in Applicant’s amended claim 38 (and similarly in claim 55), as proposed to be amended. Therefore, the 35 U.S.C. § 103(a) rejection of dependent claims 51 and 68 cannot be maintained and should be withdrawn.

Conclusion

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 38-40, 42-57, and 59-74 in condition for

allowance. Applicant submits that the proposed amendments of claims 38, 40, 42-45, 48, 50-55, 57, 59-62, 65, 67-71, and 74 and cancellation of claims 41, 58, 75, and 76 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their claimed relationships were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final Office Action presents new arguments as to the application of the art against Applicant's claims. It is respectfully submitted that entry of the Amendment would allow the Applicant to reply to the new arguments and place the application in condition for allowance.

Finally, Applicant submits that entry of the Amendment would place the application in better form for appeal, should the Examiner continue to dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that the claims, as amended, are neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

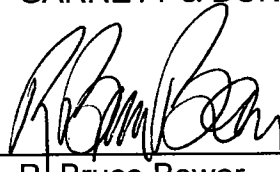
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 1, 2010

By: _____

A handwritten signature in black ink, appearing to read "R. Bruce Bower", is written over a horizontal line.

R. Bruce Bower
Reg. No. 37,099